

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

DARRYL ELLIOTT,)	
)	
Plaintiff)	
)	
v.)	Civil No. 96-206-B
)	
RUST ENGINEERING & CONSTRUCTION, INC., ET AL.,)	
)	
Defendants)	

***RECOMMENDED DECISION TO GRANT DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT***

Two of the defendants in the current matter, Rust Engineering & Construction, Inc. and Rust International Corp. (the defendants), move for a summary judgment on the plaintiff Darryl Elliott's¹ complaint, and move to strike several affidavits submitted by the plaintiff in his response to their motion for a summary judgment. The plaintiff seeks damages against the defendants pursuant to a theory of negligence as a result of injuries he sustained in a workplace accident. By their answer, the defendants raised the affirmative defense of release as a bar to the action and now move for a summary judgment based on such a defense. The Court recommends that the defendants' motion to strike be denied but that their motion for a summary judgment be granted.

I. Summary Judgment

A summary judgment is appropriate only "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter

¹ Darryl Elliott became the sole plaintiff in this action as a result of the stipulation filed on November 13, 1996, by the parties pursuant to Fed. R. Civ. P. 41(a)(1) dismissing with prejudice Sandi Elliott from the matter.

of law." Fed. R. Civ. P. 56(c). An issue is genuine, for these purposes, if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). "A material fact is one which has the 'potential to affect the outcome of the suit under applicable law.'" *FDIC v. Anchor Properties*, 13 F.3d 27, 30 (1st Cir. 1994) (quoting *Nereida-Gonzalez v. Tirado-Delgado*, 990 F.2d 701, 703 (1st Cir. 1993)). The Court views the record in the light most favorable to the nonmovant. *McCarthy v. Northwest Airlines, Inc.*, 56 F.3d 313, 315 (1st Cir. 1995).

II. Factual Background

Viewed in the light most favorable to the plaintiff, the summary judgment record reveals the following material facts. Darryl Elliott and his wife, Sandi Elliott, originally brought a two-count complaint against the defendants in the Maine Superior Court (Somerset County) on July 16, 1996, seeking damages pursuant to theories of negligence and loss of consortium as a result of the injuries Darryl Elliott sustained while working at an S.D. Warren Co. construction site on July 21, 1990, in Hinkley, Maine. Because of the diversity of citizenship between the parties (the plaintiffs reside in New York while the three corporate defendants have various state contacts), and because the amount in controversy exceeds \$50,000, the defendants served notice of removal of the action to this federal court pursuant to 28 U.S.C. §§ 1441, 1446 (1994) on August 29, 1996.

Darryl Elliott, a resident of Sandy Creek, New York, was employed by Allegheny Industrial Electrical, Inc. (Allegheny), on July 21, 1990, the date of the accident. Allegheny was at the time a subcontractor and wholly-owned subsidiary of the Rust Engineering Co. performing work on a construction project at the S.D. Warren Co. paper mill in Hinkley. While climbing a stairway at the plant that day, Elliott's left hand became caught between an electrical box or conduit situated along

the handrail. This placement of the box and handrail, catching the plaintiff's hand as it did, caused him to fall and injure his left arm, wrist, and hand. Defendants Rust Engineering & Construction, Inc. (owner of its subsidiary, the Rust Engineering Co.) and Rust International Corp. were the general contractors of the project that day and, according to the plaintiff, were responsible for performing and supervising the work, as well as ensuring that the environment was safe for the subcontractors to perform their duties. Darryl Elliott alleges that because the defendants failed properly to install and inspect the stairway, handrail, and conduit box, as well as failed properly to supervise the workers and the work environment, they were negligent, and such negligence proximately caused his injuries.

The defendants contend that the current action is barred in view of the fact that the plaintiff previously entered into a settlement agreement wherein he agreed to "release" his claims against them in consideration for a lump settlement payment. On July 11, 1996, Darryl Elliott entered into a lump settlement agreement approved by the Maine Workers' Compensation Board. He received \$215,000 (in addition to the sums and benefits he received from 1990 to the date of the settlement as part of his workers' compensation), in consideration for which Elliott agreed :

[To] remise, release and forever discharge ***Rust Engineering, the Employer*** and American Fidelity/MGA, the Insurance Carrier, ***plus their subsidiaries, successors, and related companies***, present and former officers, agents, employees and attorneys (hereinafter referred to as "Releasees"), of and from any and all actions, claims and damages, including, but not limited to, claims to permanent impairment, compensation, rehabilitation, attorney's fees, medical and other expenses, . . . or any other action, of any kind, in law or equity, which Releasor now has or ever had against the Releasees arising out of or related in any way to the Releasor's employment at Rust Engineering, or to the claimed work-related injury of 7/21/90, (Emphasis added.)

Despite the above agreement, Elliott and his wife brought the current action against the defendants. The defendants contend that the above language serves to bar the current claim because it expressly recites that no claim may be brought against "Rust Engineering" or the companies related to Rust Engineering Co. Elliott contends that the above language was meant only to include his former employer, Rust Engineering Co., and the employer's insurance carrier; nowhere in the settlement agreement, he notes, is there any explicit reference to the current defendants. Elliott maintains that, unlike Rust Engineering Co., none of the current defendants were obligated to pay workers' compensation benefits to him or other employees of their subsidiary, Rust Engineering Co., and thus, could not be parties to the settlement agreement.

III. Discussion

The defendants contend that they are entitled to a summary judgment because Elliott's claims against them are barred by the unambiguous release language of the settlement agreement. Elliott responds that because it is unclear from the language of the agreement whether the release truly is intended to encompass the current defendants, a summary judgment is inappropriate in view of the ambiguities surrounding the document and the existing disputed material facts. Elliott also contends that because the current action is brought not against his former employer but, rather, against parent corporations that are separate legal entities, he is entitled to bring it. Moreover, because the defendants are not "employers" for purposes of liability under the Maine Workers' Compensation Act, Elliott contends that they have not surrendered their common law defenses to liability in exchange for immunity from an employee's common law rights of action.

The Court initially denies the defendants' motion to strike the affidavits attached by the plaintiff to his response to their motion for a summary judgment because they contain defective

jurats. The Court accepts the amended affidavits subsequently submitted by the plaintiff for purposes of the plaintiff's response to the motion. These affidavits satisfy the requirements of the Federal Rules of Civil Procedure and are to be considered by the Court as part of the plaintiff's opposition to the motion for a summary judgment.

The Court next determines that the defendants' motion for a summary judgment should be granted. "It is beyond cavil that a suit can be barred by the earlier settlement of another suit in either of two ways: res judicata or release." *Penobscot Indian Nation v. Key Bank of Maine*, 906 F. Supp. 13, 20 (D. Me. 1995) (quoting *Nottingham Partners v. Trans-Lux Corp.*, 925 F.2d 29, 32 (1st Cir. 1991)).² It is well settled that "Maine courts both encourage settlements, . . . and recognize the binding force of releases," *Id.* (citations omitted). "Maine law . . . recognizes the preclusive effect of settlements." *Id.* (citations omitted).

The interpretation of unambiguous contractual language is an issue of law for the Court to decide. *Fowler v. Boise Cascade Corp.*, 739 F. Supp. 671, 673 (D. Me. 1990), *aff'd*, 948 F.2d 49 (1st Cir. 1991). "When there is an integrated contract, the parol evidence rule excludes from judicial consideration extrinsic evidence that alters or varies unambiguous contractual language." *Loe v. Town of Thomaston*, 600 A.2d 1090, 1092 (Me. 1991) (citation omitted). Contrary to the plaintiff's contention, the Court finds that the language of the settlement agreement is clear and decisive of this action. Here the clear language releasing Rust Engineering Co. and its insurance carrier and "their

² Although the parties refer to the agreement at issue as a "release," it actually is in the nature of a settlement. A "release" is a writing providing that a duty owed to the maker of the release is discharged immediately or on the occurrence of a condition. Restatement (Second) Contracts § 284(1) (1979). The term "settlement" relates to "the fulfilment of any conditions which, in accordance with the compromise agreement, are prerequisite to the discharge of a claim; A settlement often involves a payment, a release, a covenant not to sue, a promise to discontinue a pending suit," 66 Am. Jur. 2d *Release* § 1 (1973).

subsidiaries, successors, and related companies" has the effect of barring the instant action. The parties have expressly released one another from future liability concerning the workplace accident involving Darryl Elliott. The Court is satisfied that the parties' use of the term "Rust Engineering," if not broad enough to encompass Rust Engineering & Construction, Inc. and Rust International Corp., certainly encompasses, in conjunction with the words "all related companies," the parent company defendants.

The Maine Supreme Judicial Court has taken the view that a general release such as the one at issue in the instant case will be construed and enforced according to its terms, and will not be deemed as reserving any rights unless the releasor clearly has specified his intent to make such a reservation. *Norton v. Benjamin*, 220 A.2d 248, 253 (Me. 1966). Furthermore, a compromise and settlement approved by a compensation board, where the liability or the extent of injury is uncertain or incapable of being satisfactorily established, has been held, in the absence of fraud, accident or mistake, to be a bar to a claim for further compensation. *See Procise v. Electric Mutual Liability Ins. Co.*, 494 A.2d 1375, 1381-1382 (Me. 1985); 82 Am. Jur. 2d *Workmen's Compensation* § 463 (1976 & Supp. 1991). As the Law Court has noted: "Where the contract is in the nature of a full settlement and a release of all claims for a consideration agreed upon, one may discover on the basis of hindsight the unwisdom of his bargain. But the law deems that society gains most from the certainty and finality of such agreements" *Norton*, 220 A.2d at 251 (quoted in *Penobscot Indian Nation*, 906 F. Supp. at 20). Accordingly, the Court finds that the plaintiff's claims of ambiguity and subjective intent do not raise genuine issues of material fact regarding what the Court deems to be unambiguous contract language.

IV. Conclusion

For the foregoing reasons, the Court recommends that the motion by Rust Engineering & Construction, Inc. and Rust International Corp. to strike certain affidavits contained in the plaintiff's response to their motion for a summary judgment be **DENIED**, but that their motion for a summary judgment on the plaintiff's complaint be **GRANTED**.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) (1988) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

Eugene W. Beaulieu
United States Magistrate Judge

Dated in Bangor, Maine on March 6, 1997.